

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

15-P-31

SYROOS SANIEOFF, trustee,¹

vs.

GRETA F. CURTIS.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The appellant Greta F. Curtis was a long-term tenant in an apartment unit in Brookline. The landlord Syroos Sanieoff (landlord) sent Curtis a notice to quit on September 24, 2012, commencing a no-fault summary process action. After the District Court entered judgment for the landlord, Curtis filed an appeal to the Appellate Division of the District Court. The Appellate Division affirmed the District Court's judgment, and we also affirm.

In her present appeal, Curtis raises an extended list of issues,² most of which she failed to raise in the District Court

¹ Of the 1473-1475 Beacon Street Realty Nominee Trust.

² The issues listed in Curtis's brief are: (1) whether the District Court judge violated Curtis's constitutional due process rights and civil rights, (2) whether the "medical evidence" statement in the trial transcript, the appellee's brief, and the Appellate Division's opinion violates the accommodation request procedure, (3) whether the justice of the

or in the Appellate Division. Accordingly, those claims are waived. See NES Rentals v. Maine Drilling & Blasting, Inc., 465 Mass. 856, 860 n.8 (2013) (issue raised for first time on appeal is waived). Other issues, raised in the District Court and in the Appellate Division proceedings are also listed in the brief, but are not presented with any argument; these accordingly are deficient under the strictures of Mass.R.A.P. 16(a)(4), as amended, 367 Mass. 921 (1975). See American Auto Sales, Inc. v. Massachusetts Port Authy., 2 Mass. App. Ct. 805, 806 (1974) (issues raised before Appellate Division but not argued before Appeals Court are treated as waived). We address the issues that were preserved in the District Court and Appellate Division and are presented to us with a sufficient level of argument to

Appellate Division wrote biased, prejudicial, and hostile statements in the decision, (4) whether the location of the Appellate Division hearing violated Curtis's due process rights, (5) whether the clerk at trial showed bias, prejudice, and hostility towards Curtis during trial due to her disabilities, (6) whether the plaintiff's counsel should have been allowed to make an argument at the Appellate Division hearing pursuant to Mass.R.A.P. 22, as amended, 418 Mass. 1601 (1994), (7) whether Curtis should have been permitted to read, if necessary, parts of documents as an accommodation which are prohibited by rule 22, (8) whether the plaintiff's counsel had a responsibility to contact the Brookline town clerk's office to find out certain information and report it to the court, (9) whether the plaintiff's counsel had a legal responsibility to report to the court that there was an issue regarding Curtis's filing with the town of Brookline violations regarding certain property, (10) whether the plaintiff's counsel should recuse himself from the case, (11) whether there is enough evidence to prove the plaintiff's counsel has personal motives regarding the case and is not just representing the landlord.

be likewise preserved on appeal. See Davis v. Tabachnick, 425 Mass. 1010 (1997) (pro se litigants held to same standards on appeal as parties represented by counsel).

Reasonable accommodations. Curtis argues that the trial judge failed to provide necessary accommodations for her disabilities. At the first status hearing, the trial judge noted that Curtis had submitted requests for accommodations, including an extension of approximately two months to file an answer. At this hearing, Curtis explained that she had difficulty following spoken words and needed oral communications to be written in real time, "like close[d] captioning."

As the courtroom did not have the resources to provide the specific accommodations Curtis sought, the judge asked counsel to speak slowly and paced the proceedings so that Curtis could participate fully. We agree with the Appellate Division in its conclusion that Curtis "participated with no apparent difficulty in comprehending what was said or in making herself heard." The trial court judge also explained to Curtis her right to seek legal counsel, and granted her a one-month extension in lieu of her two-month request to file an answer.

Throughout the trial, Curtis asserted her need for real time transcriptions. Although the trial judge requested her to provide further explanation of her disabilities and to provide medical documentation of them, she declined. The judge

continued to instruct the plaintiff's counsel to speak slowly, ensuring that Curtis could understand and fully participate in the proceedings. The trial transcript does not indicate that Curtis had difficulty comprehending the proceedings.

"Any person within the commonwealth, regardless of handicap or age as defined in chapter one hundred and fifty-one B, shall, with reasonable accommodation, have the same rights as other persons to . . . be [a] part[y]" in a lawsuit. G. L. c. 93, § 103. The Massachusetts Trial Court ADA accessibility policy makes explicit the trial court's interest in providing reasonable accommodation. Given that the courtroom did not have the capability of providing the exact accommodation that Curtis sought, the judge made alternative arrangements that appropriately addressed Curtis's disability; the Appellate Division did so as well.³ There was no prejudice to Curtis's ability to participate meaningfully in the summary process proceedings or the appeal.

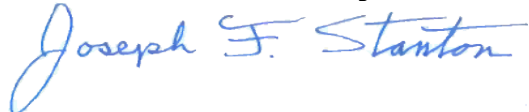
Service of process. Curtis argues that the return of service filed with the court was fatally flawed because it was made by a person who Curtis maintains was neither a constable nor a special process server. However, the record is devoid of

³ The Appellate Division granted Curtis five months to file her brief.

any evidence supporting her claim.⁴ Absent clear error, we do not disturb the trial court's factual determinations. See Weiler v. PortfolioScope, Inc., 469 Mass. 75, 81 (2014).^{5,6}

Judgment affirmed.

By the Court (Trainor,
Katzmann & Grainger, JJ.⁷),



Clerk

Entered: August 29, 2016.

⁴ "It is [the defendant]'s obligation to include in the record appendix any documents on which [s]he relies, including any memoranda of law." Chokel v. Genzyme Corp., 449 Mass. 272, 278-280 (2007).

⁵ The plaintiff's request for appellate legal fees and cost is denied.

⁶ The defendant's request to bar the plaintiff's counsel from further involvement in the present action or in any future cases between the parties is denied.

⁷ The panelists are listed in order of seniority.